IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.243 OF 1989

The State of Maharashtra)
(Original Opponent)) ...Appellant.

V/s

1. Shri Narayan Balya Gharat,)
Adult.)
2. Shri Baliram Balya Gharat,)
Adult.)
(Original Claimants)) ...Respondents.

Mr. K.K. Tated, AGP for the appellant - State.
None for the respondents.

ALONG WITH
CROSS-OBJECTIONS NO. 16017 of 1989
IN
FIRST APPEAL NO. 243 OF 1989

Narayan Balya Gharat,)
Baliram Balyan Gharat,)
Both residing at village Kowe)
Tal. Panvel, District - Raigad) ...Appellants.
(Orig.Claimants)

Versus

The State of Maharashtra)
(Through the Special Land)
Acquisition Officer, Metro)
Zone No.4, Panvel,)
District - Raigad) ...Respondent.
(Orig.Opponent)

None for the appellants.
Mr. K.K. Tated, AGP for the respondent - State.

ALONG WITH
CIVIL APPLICATION No.865 OF 1990
IN
CROSS-OBJECTIONS NO.16017 OF 1989

Narayan Balya Gharat
& Anr. ...Applicants.

Vs/

The State of Maharashtra ...Respondents.

None for the applicants.
Mr. K.K. Tated, AGP for the respondent - State

CORAM: R.M.S. KHANDEPARKAR &
V. M. KANADE, JJ.

DATE: 23rd September, 2005

ORAL JUDGMENT: (Per V.M. Kanade, J.)

1. The appellant - State is challenging the judgement and award passed by the Civil Judge (Senior Division) Raigad at Alibag in Land Acquisition Reference No. 22 of 1986 whereby the reference filed by the claimants was allowed and the State was directed to pay to the claimants an amount of Rs 4,32,575.25 paise with interest @ 9% per annum on the amount of Rs 1,22,092.83 paise from the date of the order till realization of the amount alongwith costs.

2. Brief facts which are relevant for the purpose of deciding the appeal are that the notification under section 4 was issued on 03/02/1970. The Special Land Acquisition Officer granted compensation @ Rs 1000.00 to 6,500.00 per acre. Against the said order, the reference was filed by the claimants. In the Written Statement filed by the State, in para 3, it is stated that no claim had been made by the claimants in reply to the notice issued to them under section 9(3)(4) of the Land Acquisition Act, 1894 (hereinafter called "the Acquisition Act"). In the reference, an amount of Rs 15.00 per sq. meter was claimed by the

claimants. In support of the reference, the claimants examined expert valuer Jeevan Narayan Kulkarni as D.W.1 and also examined claimant - Narayan Balya Gharat as D.W.2. The fact that no claim was made in reply to the notice which was served under section (3)(4) of the Acquisition Act has not been disputed by the claimant - Narayan Balya Gharat in his evidence.

3. The learned Additional Government Pleader appearing on behalf of the State has submitted that since the notification was issued on 03/02/1970 and the reference was pending in the Court of Civil Judge at the time when the amendment was made to section 25 by amending Act 68 of 1984, the provisions of unamended section 25(2) of the Acquisition Act would be applicable and, as such, the Reference Court was precluded from awarding higher compensation than the one granted by the Collector. In support of the said submission he relied on the Division Bench Judgement of this Court in the case of State of Maharashtra Vs. Dhanaji Kamalu Joshi in First Appeal No. 430 of 1993 decided on 25/08/1005 and 01/09/2005.

4. Though respondents are served, none appears on behalf of the respondents.

5. We have perused the judgment and award of the Reference Court as also the evidence adduced by the claimants. The fact that no claim had been made in reply to the notice under section 9(3)(4) of the Acquisition Act has not been disputed by the claimants in their evidence. A specific averment has been made by the State in its Written Statement in para 3 that no claim had been made by the respondents - original claimants in reply to the notice under section 9(3)(4) of the Acquisition Act. Thus, the ratio of the judgment in the case of Dhanaji Kamalu Joshi (supra) would be squarely applicable to the facts of the present case and the judgment and award passed by the Reference Cout, therefore, will have to be set aside and the compensation will have to be reduced to Rs 1000.00 to Rs 6,500.00 per acre as awarded by the SLAO. The award is accordingly modified and the solatium and other components which the claimants are entitled will have to be calculated on the amount so reduced by this judgment and order. The claimants also will have to refund the excess amount which they have received with interest @ 6% per annum.

6. First Appeal No.243 of 1989 is allowed in the above terms. Cross-objections beaing Stamp No.16017 of 1989 would not survive and the the same stand

dismissed accordingly.

7. Since the Cross-Objection bearing Stamp No.1507 of 1989 has been disposed of, Civil Application No.865 of 1990 taken out therein, does not survive and the same is also disposed of accordingly.

(R.M.S. KHANDEPARKAR, J.)

(V.M. KANADE, J.)